SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1384

CLAY COMMUNICATIONS, INC., *Petitioner*

v.

JAMES M. SPROUSE, *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE WEST VIRGINIA SUPREME COURT OF APPEALS

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The respondent, James M. Sprouse, respectfully prays that a writ of certiorari not be issued to review the questions presented below which were decided adversely to the petitioner by the judgment of the Supreme Court of Appeals of West Virginia, entered on February 4, 1975.

OPINION BELOW

The complete opinion of the West Virginia Supreme Court of Appeals is reported in 211 S.E.2d 764, and is printed as Appendix A to the petition for a writ of certiorari filed by the petitioner.[1]

[1]The opinion having been so printed, references to the opinion are by page number to the Petitioner's Appendix designated as "C. App. A, p. 1a." References to the petition for Writ of Certiorari are by page number designated as "C. 1". References to the Record of Proceedings in the trial court are by page number as "R. 1."

JURISDICTION

The judgment of the West Virginia Supreme Court of Appeals was entered on February 4, 1975. By an order of this Court, entered May 2, 1975, the respondent was granted an extension of time within which to file a cross-petition to the writ of certiorari filed by the respondent on May 5, 1975, to and including July 4, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

QUESTIONS PRESENTED

1. Whether a newspaper commits actionable libel by the publication of a series of articles concerning a legitimate land transaction by a candidate for election, when the articles are linked by an editorial to a scheme of organized plunder and crime by officials of a previous administration, and such articles contain false statements of fact which clearly imply corrupt practices by the candidate.

2. Whether in determining actual malice in a libel action by a public figure, the articles may be viewed in their entirety, giving due weight to the content, placement, timing and correlation of the articles, including the use of headlines containing such phrases as "cleanup," "land grab," and "Dummy Firm Seen Proving Corruption," although connecting the candidate with corrupt activity were not as blatantly libelous and inflammatory as the headlines.

3. Whether a newspaper is constitutionally protected when it prints libelous statements of an opposition candidate, having first conspired with aides of the opposition candidate to "plant" the story in a pre-

vious edition, where the opposition candidate's comments and statements were obtained by their subsequent interview and published by the newspaper with knowledge of their falsity and with intent to injure.

4. Whether the record as a whole, including the timing of the stories (ten days prior to the election), their placement, their correlation with a libelous front-page editorial, their inferences, the deviation between headlines and some actual statements in the stories, evidence of an actual conspiracy between the opposition candidate and the newspaper to print and distribute to other newspapers false and injurious statements, the deliberate reporting of important facts opposite to how they were firmly established by the reporter's meager investigation, and the admission by the newspaper that it knew there was nothing improper in the transaction, is constitutionally sufficient to sustain a finding that the publications contained false and defamatory statements of fact published with the knowledge that they were false or with the reckless disregard of whether they were true or false.

5. Whether the plaintiff's undisputed and uncontradicted testimony which detailed the general damage to his reputation, his standing, personally and professionally, his law practice, and the mental and physical anguish inflicted on himself and his family was constitutionally sufficient to sustain a jury award of $250,000 in actual damages.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States

Amendment I: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ."

Amendment XIV: ". . . [N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

The respondent, James M. Sprouse, an unsuccessful gubernatorial candidate in the 1968 general election in West Virginia instituted a libel action in the Circuit Court of Fayette County against the petitioner. The action was based upon the publication of a series of newspaper articles, which appeared two weeks before the election, accusing the respondent of nefarious conduct in connection with a legitimate land transaction. Those articles, which charge conduct that directly smacks of criminality and corruption, were a part of a scheme or plan between the newspaper and the staff of the opposition candidate and were published with actual knowledge of their falsity and with the intent to damage or destroy the respondent.

The respondent sought recovery of actual and punitive damages for the malicious defamations published by the petitioner. Upon the trial of the case before the Circuit Court of Fayette County, West Virginia, sitting with a jury, the respondent contended that the articles were published with actual malice, knowledge they were false and in reckless disregard of truth, and thus were without the protection of First Amendment guarantees. Evidence bearing upon the issue was presented to the jury, which, upon proper instruction, found actual malice.

The trial culminated in a jury verdict in respondent's favor in the amount of $250,000 actual or compensatory damages and $500,000 punitive damages. Judgment was duly entered upon the verdict by the trial court.

That verdict and judgment was appealed to the Supreme Court of Appeals of West Virginia. By its final judgment, the Court below affirmed the verdict and judgment of $250,000 actual damages, reversed the verdict and judgment for $500,000 punitive damages, as a "matter of Federal constitutional law," holding that $250,000 actual damages was sufficiently punitive. The case was remanded to the trial court with directions to strike the punitive award from the judgment.

THE EVIDENCE ADDUCED AT TRIAL

A. Background of the Publications and Participation of the Moore Aides

In 1968, the respondent, James M. Sprouse, was the Democratic candidate for Governor of West Virginia. His opponent in that 1968 General Election was Arch A. Moore, Jr.

Prior to his candidacy in the 1968 election, Sprouse, as president of Selmet Corporation, a New York corporation formed by the respondent's classmate, acquired an interest in certain acreage in Pendleton County (R. 393, 394). The original purchase, which included less than 2,600 acres, was obtained from Henry Regnery on March 12, 1966 for $134,620 (R. 192). The purchase culminated a long standing and well-advertised effort by Regnery to sell the land (R. 192, 193). The corporation qualified to do business in West Virginia on August 25, 1966, two years prior to the sale involved and more than two years prior to the publication of the libelous stories by the Daily Mail. Sprouse was listed as president and the

principal place of business as 700 Terminal Building, where Sprouse practiced law (R. 469). Outstanding among a number of subsequent out conveyances by Selmet during the ensuing two-year period, was one of 1,385 acres to Nature Conservancy for $81,364 on October 2, 1968 (R. 208). This property was ultimately conveyed to the United States government for its use as a part of a recreation area maintained by the United States Forest Service.

Including this conveyance, the profit to Selmet was approximately $48,176.75, a factor disclosed by public records admittedly examined by Mellace (C. App. A. p. 11a). After these conveyances, and at the time of the publications, only 87.09 acres of the original tract remained (R. 255).

During this same period, Sprouse signed his name to many, separate deeds which were a matter of public record in the office of the Clerk of the County Court of Pendleton County (R. 207, 469). The total profit to Sprouse, derived from the sale of the entire "Regnery-Selmet" tract was less than $14,000 (R. 411).

Nine months prior to the libelous publications, in early March, 1968, the respondent, Sprouse, made a public disclosure of his assets, which included his interest in the Pendleton County forest acreage and was valued at $10,000 (R. 459-61). The newspaper's editors freely conceded at trial that there was nothing suspect about the real estate transaction nor Sprouse's participation in it, rather that it was a regular and normal business transaction. This was their opinion, both at the time of publication, and time of trial (R. 330).

On October 14, 1968, William Loy and Norman Yost, the key campaign aides to candidate Moore, visited the

offices of the Charleston Daily Mail, a newspaper published by petitioner, for the admitted purpose of supplying information of a "suspect" land transaction in Pendleton County, involving the respondent (R. 283), and the ultimate publication of a news story deleterious to respondent Sprouse (R. 381, 382). Loy and Yost met with Jack Maurice, Vint Jennings and Robert Mellace, all editors and the top officials of the newspaper (R. 555, 556).

Although the newsman was fully aware of the self-interests of the Moore aides (R. 283), Mellace made a trip to Pendleton County with Loy, the chief campaign aide (R. 555, 556). They were met by another Moore aide, Latimer, who transported them to the site of the property (R. 292).

During the visit, Mellace purportedly conducted an "investigation." The "investigation" consisted primarily of information presented by the political aides and an interview with two forest service officials, Oliver and Marshall (R. 292, 297). Oliver did not testify, but Marshall's testimony established actual knowledge by Mellace that some of the information he published was false. Marshall was the official who was acquainted with the details concerning the land (R. 251). According to Marshall, Mellace attempted to have him verify that there was 400 acres of land remaining after the sale, providing Selmet an additional profit of $400,000 (R. 256). Marshall insisted to Mellace that this was not true and that he showed the editor-reporter (from Forest Service records) that there was less than 100 acres at $500 per acre, for a remaining profit of less than $50,000. Despite this, Mellace quoted the Forest Service official as indicating 400 acres at $1,000 per acre.

Mellace prepared his article for publication on October 24, 1968. Before publication of the story, a copy was delivered to Norman Yost, media director for Moore's campaign, for distribution to all weekly and daily newspapers for simultaneous publication. Mellace admitted this was unprecedented in the history of the petitioner's publishing experience (R. 365).

B. Publications

"It is important that this entire case be viewed against a background of events which occurred in West Virginia during the late 1960's when rather widespread corruption was exposed in State government. This corruption ultimately led to federal prison terms for numerous high-ranking officials, including a former Governor and a former Attorney General of West Virginia." (C. App. A. p. 16a)

West Virginia newspapers for a number of years had highlighted stories of the corruption of State officials. The vehicles of corruption and crime had been repeatedly and dramatically presented as "dummy corporations" formed in Florida and Ohio (R. 325, 427). The dummy corporations were used by these convicted officials as a mechanism for bribery and kickbacks. The convicted officials belonged to the same political party as the respondent (R. 427).

In view of the widespread public awareness of previous corruption, the inclusion of the false statements in otherwise accurate articles reinforced the implication of improper conduct and logically led to false conclusions.

The first article detailed information concerning the date of incorporation of Selmet and the date legislation was handled in Congress creating a national recreation

area. The coincidence of these two events appeared four different times in the publications. The unmistakable implication was of "inside knowledge" by the respondent in connection with the legislation. That this was an obvious and logical conclusion to be drawn is evidenced by the statement of the opposition candidate printed the next day in which he posed a rhetorical question: "Did they have prior knowledge of the Forest Service recommendation that this area of land would be utilized as a portion of the Federal recreation complex plan there? . . . Who was responsible for changing the boundaries . . .? Have any members of this corporation been involved in similar land transactions to the federal government . . .?" (C. App. p. 47a, 48a) The story identified other members of the partnership as officials in the Democratic party, active in the affairs of the United States government.

Another story explained in great detail how the corporation was formed in New York. "There is additional evidence it [Selmet] has never done any business in New York where it was chartered, and where the law permits incorporation by an agent without identifying the incorporators, which is forbidden by West Virginia law." (C. App. A. p. 42a)

These are but examples. A full reading of the articles, in light of the background of corruption previously proven in West Virginia, completely demonstrates that the purpose of the articles was to impress readers that respondent Sprouse had been engaged in unethical, corrupt and criminal activity.

A similar distortion resulted from the story about Harper and "Seneca Rocks", a tourist attraction some ten miles from the location of Selmet's property, which

was owned by the Harper family (C. App. A. p. 41a) The portrayal of the plight of this farmer and his mistreatment by the United States government was essentially truthful. It was, however, completely unrelated to the Selmet transaction. Yet the text and the headlines implied that the farmer was being taken advantage of by the respondent and that he was going to fight the "deal" in court. Closely read, the "deal" related to Harper's problem with the government, but the implication of the story was that he was going to fight the respondent's "deal."

In the context of basically true, but cleverly distorted statements, the headlines and sub-headlines conveyed even greater libelous impressions. They were: "Pendleton Realty Bonanza by Jim Sprouse Disclosed;" "Cleanup of Nearly $500,000 in View;" "Fortune to Jim Sprouse, But Pittance for Seneca" (referring to Harper); "Landmark's Owner Plans Court Fight Against Deal."

It is significant that in this series of articles the petitioner twice used huge pictures to convey false facts. The first instance was use of a "cropped" picture run across an entire page. This was a picture of two different areas, "cropped" and fit together to create the appearance of a much larger section of choice land (R. 362). The second instance involved a picture of the "Seneca Rocks" a valuable tourist attraction used in connection with the series of articles. Underneath the picture of the Rocks was the caption "Where Government Candidate Cleans Up." This tourist attraction was some ten miles from the Selmet property (R. 216).

The newspaper editors testified that they knew at the time of publication that there was nothing improper involved in the plaintiff's corporate land involvement (R.

330). Despite their admitted belief in the legitimacy of this transaction, the newspaper interviewed the opposition candidate after printing the first story and reported the interview under the headline " 'Dummy Firm' Seen Proving Corruption", and "Moore Asks Federal Probe Into Sprouse's Pendleton Land Grab." The text of this story contained such allegations as: ". . . 'Here we have a dummy corporation, set up in the dark of night in the state [sic] of New York. . . . This seems vaguely reminiscent of the Florida corporation scandals of a few months ago . . . . It would appear that this land grab smacks of the same old Statehouse corruption,' Moore said." (C. App. A. 46a) The article then included a series of incriminating rhetorical questions addressed to respondent Sprouse.

Included in this edition was a long, front-page editorial asserting in positive and condemning language that Sprouse's election would result in more of the same corruption that had existed in previous administrations (App. A. 1a).

C. Damages

The plaintiff not only testified concerning general damages he suffered, but indicated in some detail how damages were inflicted. The plaintiff's testimony was completely uncontradicted either on cross-examination or by the introduction of any defense testimony.

The plaintiff testified as to the devastating effect the libels had on him physically and emotionally. He told of the doubts that his campaign aides entertained of his connection with the discredited Barron gang; the letters he received from West Virginians who now felt he was as corrupt as the convicted politicians in Federal Court; the embarrassment he endured having to deny his involvement in corrupt practices to members of his law

firm, friends and campaign aides; the pain he witnessed on the faces of his wife and children; the suffering of knowing one of his children was physically abused in school and the publications of letters to the editor from former supporters who now defected because of the so-called "disclosure" of corruption (R. 447-453).

The plaintiff did not indicate the election loss itself as an element of damage. It is true that the plaintiff lost the election by only 12,000 votes or 5/8 of 1 percent of the total votes cast (R. 393). The defendant, however, was the party introducing the issue of election loss on cross-examination of the plaintiff (R. 457, 524).

D. Instructions

The instruction of the trial court to the jury met with every exacting standard laid down by *New York Times* (App. B. 4a). Petitioner's brief misquotes Instruction Number 5. This instruction in no way suggests that the newspaper had no greater right to speak critically of the plaintiff during the political campaign than on any other occasion. The instruction merely says that "libel is no more justifiable when published against a candidate for public office than if published of him on any other occasion," and in no way diminishes the right of the press to speak critically (C. App. F. p. 75a).

The petitioner's complaint of the use of "false statement" as opposed to "false statement of fact" in the instruction appears to be a belated distinction now made for the first time. Defendant's Instruction Number 5 offered and given to the jury by the trial court contains the very language "false statement" now objected to (App. B. 4a). Other instructions, including Defendant's Instruction Number 4, clearly advised the jury that the false statements had to do with a defamatory writing

charging the respondent with a commission of a crime, fraud, or dishonesty (App. B. 4a). Under all the circumstances, no other permissible inference can be made.

Plaintiff's Instruction Number 7 carefully admonished the jury that ill will was insufficient to establish actual malice and not that it should be considered in that connection as urged by the petitioner's brief (C. App. F. p. 75a).

ARGUMENT

Giving strict adherence to the principles of *New York Times* v. *Sullivan*,[2] and its progeny, the judgment of the Supreme Court of Appeals of West Virginia sustained the verdict and judgment of $250,000 in actual damages for libel. Reviewing the evidence in the context of these enunciated First Amendment standards, the court below found the jury verdict warranted on the basis of sufficient evidence. The judgment of the court below, having been framed within the actual malice exception to First Amendment guarantees, and giving required adherence to the protection of robust political discussion contemplated by the First Amendment, is, to the extent of its affirmance of actual damages, free from constitutional error.

THE APPLICATION OF THE *NEW YORK TIMES* TEST OF MALICE

In holding that there was sufficient evidence of "actual malice," the court applied the acceptable and pre-

[2]For brevity and convenience of reading, cases shall be referred to by style only. Decisions so handled may be: *New York Times* v. *Sullivan*, 376 U.S. 254, 11 L.Ed. 2d 686, 84 S. Ct. 710 (1964); *Garrison* v. *Louisiana*, 379 U.S. 64, 13 L.Ed 2d 125, 85 S. Ct. 209 (1964); *Curtis Publishing Co.* v. *Butts*, and *Associated Press* v. *Walker*, 338 U.S. 130, 18 L.Ed. 2d 1094, 87 S. Ct. 1975 (1967); *Beckley Newspapers Corp.* v. *Hanks*, 389 U.S. 81, 19 L.Ed. 2d 248, 88 S. Ct. 197 (1967); *St. Amant* v. *Thompson*, 390 U.S. 727, 20 L.Ed. 2d 262, 88 S. Ct. 1323 (1968); *Rosenbloom* v. *Metromedia, Inc.*, 403 U.S. 29, 29 L.Ed. 2d 296, 91 S. Ct. 1811 (1971); *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 41 L.Ed. 789 (1974).

scribed standard of the publication of a statement made with knowledge of its falsity or with reckless disregard of whether it was in fact false. *New York Times* v. *Sullivan* at 280. In arriving at its decision, the court considered several factors upon which the actual malice finding was based.

Following the doctrine of *Curtis Publishing Company* v. *Butts* and *Associated Press* v. *Walker,* the court below found that participation by a newspaper in a plan or scheme to injure is *evidence* of recklessness and wilful disregard for truth. Consequently, the "good faith" publication requirement of *St. Amant* was an element to be determined by the finder of fact. *St. Amant* v. *Thompson* at 732.

The court below and the jury were equally warranted in considering that in view of the knowledge gleaned from conversations with Forest Service officials the defendant published false statements with a "high degree of awareness of . . . probable falsity." *Garrison* v. *Louisiana at* 74. This information, coupled with that apparent upon the face of documents examined during the course of the "investigation," as well as the defendant's admission of belief in the legitimacy of the transaction, permitted the conclusion "that the defendant in fact entertained serious doubts as to the truth of his publication." *St. Amant* v. *Thompson* at 731.

The court below, in weighing all these factors, premised their effect upon the stated requirement that collectively they must prove that "the defendant *Daily Mail* knew that the defamatory material contained in the articles it printed was false or for plaintiff to demonstrate that the *Daily Mail* was reckless and willful

in its indifference to the truth of the printed material." (C. App. A. p. 7a)

ACTUAL MALICE AS GLEANED FROM THE ARTICLES AND THE ACCOMPANYING HEADLINES

Reasoning that headlines are an integral part of a news article, the court below properly reviewed the articles in their entirety. The headlines, which portrayed a "bonanza" derived from a "land grab" by a "dummy firm" reminiscent of "more of the shabby same," were equally as false as the statements contained in the body of the articles with reference to the amount of land left and its value. The clear import of these articles was the totally false accusation that the respondent, with the aid of "inside" information, established a dummy corporation to purchase land within the confines of a federal recreation center and reap a consequent, enormous and disproportionate, "bonanza" profit by resale of the land to the federal government.

While the petitioner contends some of these phrases were adopted from the comments of respondent's political opponent, reprinted in the text of the articles, no attribution to the opposing candidate was apparent from the headlines and could only be deciphered by a detailed reading of the entire article. Admittedly, the avoidance of self-censorship is an essential consideration in public figure libel cases, but it is "not the only societal value at issue." *Gertz* v. *Robert Welch, Inc.* at 346. Lies and false statements "do not serve the ends of the First Amendment, and no one suggests the desirability for further proliferation. *St. Amant* v. *Thompson* at 732.

Goldwater v. *Ginzberg,* [414 F.2d 324 (2nd Cir., 1969), *cert. den.,* 396 U.S. 1094, 24 L.Ed. 2d 695, 90 S. Ct. 701 (1970)], is illustrative of the effect of unbridled discre-

tion where false statements of others are reprinted with knowledge of their falsity.

Moreover, contrary to the contention of counsel, this is not an instance akin to *Beckley Newspapers* v. *Hanks*, wherein the West Virginia Supreme Court failed to abide by the First Amendment. The case was decided fairly upon the principles set forth in existing case law, and as the Court found, the jury had been properly instructed on the issue of actual malice by the trial court.

ACTUAL OR COMPENSATORY DAMAGES SUPPORTED BY THE EVIDENCE AND AWARDED UPON PROPER INSTRUCTION

The petitioner contends that the court below and the jury improperly considered the respondent's loss of election as an admissible item of actual damage. Testimony about the election loss first surfaced in this case at the instance of the petitioner who, on cross-examination, asked the plaintiff if it weren't true, that he had said on a prior occasion, that he lost the election because of an endorsement by a former Democratic Governor, who had been discredited by conviction of a Federal felony. The plaintiff denied this and it remained in the evidence uncontroverted (R. 457). Moreover, while the evidence of damage might be said to be uncorroborated, it was equally undisputed. The respondent's testimony clearly and convincingly shows his suffering and mental anguish as well as that of his children.

The jury was properly instructed by plaintiff's Instructions 10 and 10a that damages, actual or punitive, were recoverable only upon proof of actual malice—being the publication of a false statement, with knowledge of its falsity or in reckless disregard of truth (App. B. 3a). The plaintiff, as provided in *Gertz*, produced

evidence of actual harm which resulted in an "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." *Gertz* v. *Robert Welch, Inc.* at 350.

CONCLUSION

To the extent that the judgment of the Supreme Court of Appeals decided the issue of actual malice and the award of actual damages adversely to the petitioner, it is free from constitutional error.

Respectfully submitted,

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APPENDIX A

Editorial Printed In The
Charleston Daily Mail

Friday Evening, October 25, 1968

An Editorial

MORE OF THE SHABBY SAME, OR SOME CLEANSING CHANGE?

The issue facing thoughtful West Virginians in 1968 is only incidentally a contest between Arch Moore and James Sprouse, the two candidates for governor.

Only in the formal sense, through the mechanics provided by the two-party system, is it a contest between Republicans and Democrats.

The issue is starkly and simply this:

More of the same? Or some hope of a cleansing and reviving change?

And on the sameness of this issue, thoughtful and concerned West Virginians cannot easily deceive themselves. The rumors to which West Virginians have long been accustomed have been swept away by indictment and conviction.

The record in Federal District Court speaks louder than all the campaign rhetoric, and it strips away the pretensions of years. While West Virginians have been paying more and more for more and more government, they have been getting an indigestible helping of scandal, corruption, deception and betrayal in their public service.

How deep and wide it spread almost no one knows. What is known for sure is this:

It reached into the uppermost echelons of the executive establishment, even into the office of Governor.

It went undetected, unexposed and unpunished for years, the whole of the apparatus for government turning a blind eye and a dead nose on the mess.

And it took the federal government, and the state government to pull the plug.

What West Virginians know now about the creeping immorality and organized plunder in their public life, they know because Washington acted, Charleston did not.

This is the indictment now brought against the statehouse and the forces which have held it as their private preserve for so long. It is an indictment not only of the few who got caught, but of the many who sat it out, unsuspecting, indifferent, mute and ineffective.

More of the same?

This is what is offered by the Sprouse candidacy and the rest of the Democratic ticket. It is a little like asking the horses to clean their own barn.

The alternative—and the only alternative:

GOVERNOR
ARCH A. MOORE, JR.

SECRETARY OF STATE
JOHN S. CALLEBS

ATTORNEY GENERAL
CHARLES H. HADEN, II

AUDITOR
ROBERT R. COCHRANE

TREASURER
J. KENTON LAMBERT

COMMISSIONER OF AGRICULTURE
EDWARD T. WHITE

APPENDIX B

Plaintiff's Instruction No. 10

[Given as amended by the trial court]

The Court instructs the jury that if you find for the plaintiff, James M. Sprouse, in estimating the damages, you may take into consideration the extent of the circulation given to the articles published in the defendant's newspaper, the rank, standing, and position of the plaintiff, James M. Sprouse, at the time of the publication, any injury to his fame and reputation, the grief, anguish, mental suffering, mortification, and humiliation which the plaintiff has undergone and suffered by reason of the articles; if you believe from the evidence that his fame and reputation were injured and that he did suffer grief, anguish, mental suffering, mortification, or humiliation, then you may award to the plaintiff such compensatory or actual damages as you find from the evidence the plaintiff has suffered or that it is reasonably certain he will suffer in the future by reason of said publications, not exceeding the amount of compensatory damages demanded in the complaint.

Instruction No. 10a

[Given as amended by the trial court]

If under the law and the evidence the jury be warranted in returning its verdict for the Plaintiff, James M. Sprouse, and if the jury further finds from preponderating evidence that the said Plaintiff has suffered damages, then they may return a verdict for such damages in such an amount as they find will justly compensate the said Plaintiff, James M. Sprouse.

In the event the jury finds that the Defendant should be punished, and as a deterrent to others, it is within

the discretion of the jury to award punitive damages in the event the amount of the jury's compensatory award is not, in the jury's judgment, adequate to punish the Defendant and to deter others. Such punitive damages, if any, must bear a reasonable relationship and not be out of proportion to the actual damages, if any; taking into consideration the wealth of the Defendant.

Defendant's Instruction No. 4

[Given by the trial court]

The Court instructs the jury that "libel" is a writing defaming another, tending to expose him to public hatred, contempt or ridicule, ordinarily by charging him with the commission of a crime, fraud or dishonesty.

Defendant's Instruction No. 5

[Given by the trial court]

The Court instructs the jury that the term "actual malice," which must be established by clear and convincing evidence to warrant a verdict for plaintiff, means that defendant published false and defamatory statements with knowledge that they were false or with a reckless disregard of whether they were true or false. Reckless disregard for the truth cannot be equated with negligence or what a reasonable man would have said under the circumstances.

Reckless disregard for truth or falsity implies a high degree of awareness of probable falsity. There must be clear and convincing evidence permitting the conclusion that the defendant in fact entertained serious doubts as to the truth of his false and defamatory publication.